Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	CC Docket No. 96-238
	)	
Amendment of Rules Governing	)	
Procedures to Be Followed When	)	
Formal Complaints are Filed Against	)	
Common Carriers	)	

SECOND REPORT & ORDER

Adopted: July 9, 1998 Released: July 14, 1998

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

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I. Introduction

1. In enacting the Telecommunications Act of 1996 (the "1996 Act"), Congress stressed the importance of establishing a "pro-competitive, deregulatory"[1] national policy framework for the telecommunications industry. In furtherance of that goal, we issued, in this docket's *First Report and Order*, revised rules governing formal complaints filed with the

[1] Joint Statement of Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 113 (1996).

Commission that allege unlawful conduct by telecommunications carriers.[2] These new rules grew out of the shortened deadlines for resolution of certain categories of complaints imposed in the 1996 Act,[3] and they had as their goal the prompt resolution of all complaints in order to "reduce impediments to robust competition in all telecommunications markets."[4]

2. In the same order, we noted the continuing importance of "explor[ing] and us[ing] alternative approaches to complaint adjudication designed to ensure the prompt discovery of relevant information and the full and fair resolution of disputes in the most expeditious manner possible."[5] In particular, we noted that the Commission's Competition Enforcement Task Force (the "Task Force") had been "charged with identifying and investigating actions by common carriers that may be hindering competition in telecommunications markets and with initiating enforcement actions where necessary to remedy conduct that is unreasonable, anti-competitive or otherwise harmful to consumers."[6] Pursuant to this mandate, on November 25, 1997, a *Public Notice* issued seeking further comment on certain issues raised in this proceeding.[7] Specifically, the *Public Notice* sought comment on the creation of an "Accelerated Docket" for complaint adjudication that would (1) provide for the presentation of live evidence and argument in a hearing-type proceeding and (2) operate on a 60-day time frame, or on some other schedule that is more compressed than that for a formal complaint proceeding conducted under the new procedures set out in the *First Report & Order*.[8]

3. In this *Second Report and Order*, we adopt rules that will govern the Accelerated Docket. We conclude that the Accelerated Docket, as created by this report and order, will provide an important step toward both Congress's and this Commission's goal of increasing competition in the telecommunications marketplace. We believe that the

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2 *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report & Order, CC Dkt. No. 96-238, 12 FCC Rcd 22497 (rel. Nov. 25, 1997) ("*First Report and Order*").

3 *See id.* at 22499, ¶ 1.

4 *Id.* ¶ 2.

5 *Id.* at 22501, ¶ 5.

6 *Id.*

7 *Common Carrier Bureau Seeks Comment Regarding Accelerated Docket for Complaint Proceedings*, Public Notice, CC Dkt No. 96-238, DA 97-2178 (rel. Dec. 12, 1997) (*Public Notice*).

8 *Public Notice* at 2.

accelerated nature of the proceedings proposed in the *Public Notice* will do much to stimulate the growth of competition for telecommunications services by ensuring the prompt resolution of disputes that may arise between market participants. We recognize that even minor delays or restrictions in the interconnection process can represent a serious and damaging business impediment to competitive market entrants. Additionally, we believe that, in many instances, incumbent carriers also will have an interest in obtaining the prompt disposition of complaints filed against them that they may view as without substantial merit. By reducing the opportunity for this type of delay in the local exchange market, while respecting the jurisdiction of the respective state commissions, we believe that the Accelerated Docket will do much to assist in the development of the pro-competitive national policy framework that Congress envisioned when it enacted the 1996 Act. Additionally, we believe that the hearing-type proceeding discussed in the *Public Notice* will substantially aid parties' presentation of their claims and defenses in complaint proceedings, thereby speeding the Commission's decisions, while maintaining their high quality, in matters dealing with the important issues of telecommunications competition.

4. Briefly stated, the new complaint procedures that we adopt today provide for the decision, within 60 days, of formal complaint proceedings that are accepted onto the Accelerated Docket, with the additional possibility of *en banc* hearing, before the full Commission, of applications for review of the staff decision. In order to expedite the complaint process in this manner, we require that parties seeking to place their disputes on the Accelerated Docket first meet for pre-filing settlement discussions supervised by Commission staff. Although a party naturally may file its complaint at any time, it will not be accepted onto the Accelerated Docket if the complainant has not made an adequate effort to settle the matter through staff-supervised discussions. Once a complaint has been filed and accepted onto the Accelerated Docket the defendant will have ten days to file its answer. Both the complainant and the defendant will be required to serve on their opponents, with their respective initial pleadings, those documents that are likely to bear on the issues in the proceeding and a list of individuals likely to have relevant knowledge. Ten days after the answer is filed, Commission staff will hold an initial status conference, at which the parties may request further discovery, including a limited number of depositions, which we expect to play an important role in Accelerated Docket proceedings. Between 40 and 45 days after the filing of a complaint, a minitrial will be held at which the parties will have the opportunity to present evidence and make argument in support of their respective positions. Commission staff shall issue its decision no more than sixty days after the matter is placed on the Accelerated Docket. Review by the full Commission will be available through an application for review. In appropriate cases, the Commission may hold *en banc* hearings to decide applications for review of Accelerated Docket proceedings.

5. As discussed below, the rules that we adopt herein modify certain deadlines and procedural requirements for complaint proceedings accepted onto the Accelerated Docket.

In general, the new rules will govern admission onto the Accelerated Docket, procedural and scheduling aspects of Accelerated Docket proceedings, the breadth of discovery available in such proceedings, and the hearing-type procedure in which Accelerated Docket proceedings typically will culminate. To the extent that the rules set out in this *Second Report & Order* do not specifically cover some procedural aspect of a proceeding on the Accelerated Docket, the rules promulgated with the *First Report & Order* will govern.[9]

A. The Need for, and Benefits of, the Accelerated Docket

6. The *Public Notice* sought comment on whether there existed a need for the hearing-type process and the shortened deadline for complaint adjudication that would be available with the Accelerated Docket. It requested examples of specific events or particular categories of disputes that might benefit from treatment under the Accelerated Docket. It asked for comment on whether the Accelerated Docket initially should be limited to proceedings raising issues of competition in the provision of telecommunications services. Additionally, the *Public Notice* sought comment on how the Commission could work cooperatively with the states to ensure that the interests of both the Commission and the states were protected.[10]

7. The substantial majority of commenters responding to the *Public Notice* support the creation of the Accelerated Docket.[11] Commenters assert that, by increasing

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[9] Initially, we anticipate exercising our discretion to apply the rules we issue with this *Second Report & Order* to complaints handled by the Common Carrier Bureau. We note, however, that certain section 208 formal complaints against wireless carriers are also processed by the Wireless Telecommunications Bureau, pursuant to that bureau's delegated authority. Accordingly, after gaining experience with the application of these rules by the Common Carrier Bureau, we may, within our discretion, make these procedures available for the adjudication of formal complaints against commercial mobile radio service providers and other wireless carriers at a later date.

Additionally, the procedures in this *Second Report & Order* will not apply to complaints alleging violations of section 255, which is entitled "Access by Persons with Disabilities." 47 U.S.C. § 255. We expressly excluded section 255 complaints from the procedures adopted in the *First Report & Order* because a separate proceeding was under way to implement the provisions of that section. *See First Report & Order*, 12 FCC Rcd at 22501, ¶ 3. For the same reasons, we believe it now is appropriate to exclude section 255 complaints from inclusion on the Accelerated Docket.

[10] *Public Notice* at 3, ¶ 1.

[11] *See, e.g.*, AT&T Corp. Comments at 1-2; Association of Directory Publishers ("Directory Publishers") Comments at 2-4; Association for Local Telecommunications Services ("ALTS")

(continued...)

competition in the market for telecommunications services, the Accelerated Docket will ultimately redound to the benefit of consumers in the form of lower prices and a broader range of available services.[12] In their support of the Accelerated Docket, commenters describe the need for a mechanism that can expedite the resolution of disputes between carriers.[13] Commenters stress the damaging effect of delay on market participants who seek to enforce the strictures of the Act. They argue that any delay in the process for resolving competitive disputes works to the benefit of the party supporting the current state of affairs.[14] Regardless of the merit of the parties' respective positions, a longer decision time prolongs the time during which the dispute remains unresolved; this in turn can delay a market participant's execution of its business plan. Similarly, absent interim, injunctive-style relief, any delay in the decision process may cause harm by prolonging the time during which the complainant must suffer the damage caused by a violation of the Act.[15]

8. Commenters supporting the Accelerated Docket note that the prospect of delay in obtaining resolution of disputes may cause them to accept a compromise solution that is less advantageous than required by the Act in order to avoid the expense, uncertainty and delay accompanying the more complete vindication of their rights through litigation.[16] To the extent that the Accelerated Docket will reduce the time that complaints remain open, it will necessarily reduce the uncertainty and expense that arises from pending complaints. Indeed, as some commenters recognize, the mere availability of such an accelerated process may

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11 (...continued)
Comments at 2-3; Competitive Telecommunications Association ("CompTel") at 3; ICG Telecom Group, Inc. ("ICG") Comments at 3; MCI Telecommunications Corp. ("MCI") Comments at 4; Personal Communications Industry Ass'n ("PCIA") Comments at 3; RCN Telecom Services, Inc. ("RCN") Comments at 2; Sprint Corp. Comments at 2-3; Telecommunications Resellers Association ("TRA") Comments at 4; Teligent, Inc. Comments at 1-2; United States Telephone Ass'n ("USTA") Comments at 2-3; WorldCom, Inc. Comments at 2.

ICG filed its comments in this proceeding one day after the comment deadline, along with its motion for leave to file comments one day late. In order to develop a complete record in this proceeding, and since we are not accepting reply comments, we hereby grant ICG's motion.

12 *See, e.g.*, TRA Comments at 6.

13 *See, e.g.*, AT&T Comments at 1-2; ALTS Comments at 2-3.

14 *See, e.g.*, MCI Comments at 4.

15 *See* MCI Comments at 4.

16 *See, e.g.*, Directory Publishers Comments at 3.

sufficiently change the dynamic in competitor negotiations that those seeking to enforce their rights under the Act will obtain better results without actually resorting to the formal complaint process.[17]

9. Not all commenters support the creation of the Accelerated Docket. Several commenters assert that the proposed structure of the Accelerated Docket is unworkable.[18] They claim that many discrete tasks must be accomplished during a complaint proceeding, and that the Commission cannot reasonably require completion of all the necessary tasks within 60 days without offending constitutional guarantees of due process.[19] Other commenters argue that, before issuing new rules to govern our complaint processes, we should wait until we have accumulated experience under the rules promulgated with the *First Report & Order*. Only at that point, these commenters argue, will we be in a position to determine how further to expedite our complaint proceedings.[20] Bell Atlantic contends that, instead of taking on the form proposed in the *Public Notice*, the Accelerated Docket should offer alternative dispute resolution services so that parties may seek a negotiated resolution to their differences.[21]

10. We believe that important benefits will flow from the expedition of the complaint process in cases appropriate for inclusion on the Accelerated Docket. The Accelerated Docket will provide prompt resolution of carrier-related disputes and it frequently will allow carriers to obtain more extensive discovery from their opponents than has been routinely available in formal complaint proceedings. Additionally, it will provide for the full and effective presentation of each party's case in a hearing-type proceeding. We expect that these benefits of the Accelerated Docket will afford competitive market participants some measure of the certainty that is necessary effectively to map out their business strategies and to stage their capital investment in order to achieve their corporate goals. They also should be better able to avoid the pursuit of multiple and expensive strategic alternatives to account for the uncertainty that can accompany unresolved, pending disputes. This, in turn, likely will lead to a more competitive marketplace that will benefit consumers. The Accelerated Docket will minimize the opportunity for carriers to continue to engage in anti-competitive practices

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17 *See, e.g.*, ALTS Comments at 2-3.

18 *See, e.g.*, Ameritech Comments at 5; BellSouth Comments at 4; SBC Companies Comments at 4.

19 *See, e.g.*, Ameritech Comments at 7-8; BellSouth Comments at 2-3; SBC Comments at 4.

20 *See, e.g.*, Ameritech Comments at 5, 11; GTE Service Corp. Comments at 4.

21 *See* Bell Atlantic Comments at 6.

because the lawfulness of those practices will be subject to expedited review under our new procedures, and market entrants will be able to obtain adjudication of their complaints much more quickly than in the past. We believe, therefore, that the Accelerated Docket will facilitate the market's continuing movement toward the full competition that Congress envisioned when it enacted the 1996 Act.

11. In addition to the benefits that we envision flowing to competitive market entrants, we believe that in certain instances the incumbent local carriers also are likely to enjoy a substantial benefit from the new docket. The Accelerated Docket will provide the incumbent carriers with a means of obtaining the expedited disposal of certain complaints filed against them. This might be particularly important, for example, when a regional Bell operating company ("BOC") seeks approval under section 271 to provide in-region inter-LATA service. In such circumstances, a BOC might wish quickly to dispose of any complaints pending against it that it viewed as spurious.[22] Additionally, parties to a proposed merger might well benefit from a means of disposing quickly of complaints filed against them. We therefore believe that the Accelerated Docket will provide a substantial benefit to defendants, as well as complainants. On balance, therefore, we believe that any additional burdens that may be imposed on parties by the Accelerated Docket are more than offset by the resulting benefits, both to the carriers themselves and to the public.

12. We are unpersuaded by the various commenters' criticisms of the Accelerated Docket. The proposed timeframe for resolving complaints on the Accelerated Docket is not unreasonable or inconsistent with due process. As with the new rules issued in the *First Report & Order*, parties to Accelerated Docket proceedings will have full notice of their opponents' contentions well before the 60-day period for conclusion of the proceeding begins to run. During the mandatory pre-filing settlement discussions, parties will fully explore, under the supervision of Commission staff, the facts surrounding, and legal bases for, each side's claims and defenses.[23] Thus, both sides should be in the position to begin actively litigating the complaint -- including providing substantial document discovery -- shortly after it is filed. Furthermore, matters not reasonably susceptible to resolution within the sixty-day framework we have established, whether due to factual or legal complexity or any other reason, will not be accepted onto the Accelerated Docket.

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[22] *See* 47 U.S.C. § 271(d) (setting out procedures for BOC applicants seeking to obtain Commission authorization to provide in-region inter-LATA service). We note, however, that approval of a carrier's application would not necessarily be contingent on completion of pending complaint proceedings.

[23] *See infra*, ¶¶ 25 - 30.

13. We also reject the argument that we should refrain from issuing rules for the Accelerated Docket until we have accumulated additional experience under the *First Report & Order*.[24] Many aspects of the Accelerated Docket will differ materially from the generally applicable rules. In particular, the hearing-type proceedings at the conclusion of actions on the Accelerated Docket[25] and the supervised pre-filing settlement discussions are new features unlike anything in the procedures from the *First Report & Order*. Likewise, the discovery necessary to prepare for these minitrial proceedings will be substantially different from that employed in other formal complaint proceedings. We do not view the new docket as something that merely builds, with minor modifications, on the generally applicable formal complaint process; rather, we believe that it will give rise to substantial benefits independent of the current process. Extensive examination of proceedings under the general rules, therefore, is not necessarily a prerequisite to setting up the Accelerated Docket. Moreover, we will continue to monitor the experience with both sets of rules. This will allow us to make further improvements in the future as it appears to be appropriate.

14. We are also unpersuaded by the argument that, instead of providing an alternative procedure for adjudicating complaints, the Accelerated Docket should be restricted to performing non-binding alternative dispute resolution ("ADR") services to which parties could jointly agree to submit their disputes.[26] As discussed below, we expect the mandatory, supervised pre-filing settlement discussions will comprise an important element of the Accelerated Docket. Moreover, the Enforcement Division of the Common Carrier Bureau (the "Bureau") stands ready to assist willing parties in negotiating resolutions to their differences in actions not on the Accelerated Docket.[27] For all involved, such a course is certainly preferable to the expenditure of time and resources necessary to litigate and adjudicate formal complaints. We do not believe, however, that it would substantially advance the development of telecommunications competition to restrict the Accelerated Docket to ADR proceedings, particularly when such services already are available to interested parties either through the Commission or through the many private ADR service providers that exist.

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[24] *See, e.g.*, Ameritech Comments at 5, 11; GTE Service Corp. Comments at 4.

[25] *See infra* ¶¶ 78 - 90.

[26] *See* Bell Atlantic Comments at 6.

[27] We note parenthetically that the Commission already offers certain alternative dispute resolution services to interested parties. *See, e.g., Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party*, Initial Policy Statement & Order, 6 FCC Rcd 5669 (1991); 47 C.F.R. §1.18.

15. We are likewise unpersuaded by SBC's claim that the expedited nature of the Accelerated Docket will reduce the chances of settlement after the filing of a complaint because counsel will be required to devote their attention to litigating, rather than settling, the case.[28] As discussed below, parties on the Accelerated Docket will have fully explored the opportunities for settlement before a complaint is filed.[29] These discussions will take place against the backdrop of rules making clear that, absent a settlement, once a matter is accepted onto the Accelerated Docket, counsel and the parties will be required to litigate their cases on an expedited schedule. We are cautiously optimistic that this knowledge itself will increase the chances of satisfactory settlements before parties resort to filing complaints with the Commission.[30] Furthermore, we believe that it winks at reality to assert that active, fast-paced litigation will reduce the chances of productive settlement discussions. It is a fact of modern litigation beyond dispute that actions routinely settle "on the courthouse steps," amid the flurry of activity of trial preparation and trial itself. Notwithstanding its criticisms, SBC has provided us with no reason to suspect that experience will be different under the Accelerated Docket.

B. Subject Matter for the Accelerated Docket

16. In response to our inquiry in the Public Notice,[31] commenters offer a wide variety of substantive criteria for acceptance onto the Accelerated Docket. Some commenters suggest that the docket be restricted to proceedings that raise issues of competitive entry into local service markets and that allege violation of sections 251, 252 and/or 272-275.[32] By contrast, Ameritech suggests that the docket be open to all disputes.[33] Certain comments suggest that the Accelerated Docket be limited to those disputes in which the complainant or its end users are likely to suffer significant harm from a delay in adjudication of the case.[34] Along the same lines, SBC suggests that the burden associated with the expedited procedures would be justified only if the dispute presents a "serious threat to the development of local

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28 SBC Comments at 7.

29 *See infra* ¶¶ 25 - 30.

30 *Cf.* ALTS Comments at 2-3.

31 *Public Notice* at 3, ¶ 1.

32 *See, e.g.*, AT&T Comments at 2; CompTel Comments at 3; WorldCom Comments at 6.

33 *See* Ameritech Comments at 9-14.

34 *See, e.g.*, MCI Comments at 4; PCIA Comments at 4.

competition."[35] Finally, one commenter suggests that, in deciding whether to admit a proceeding onto the Accelerated Docket, the Commission staff consider whether the oral presentation of the dispute to a decision maker appears likely to result in a better understanding of the relevant issues.[36]

17. Under the rules that we adopt today, we confer on the staff administering the Accelerated Docket broad discretion to determine which formal complaints relating to common carrier services it will accept onto the docket. In exercising this discretion, the Bureau should consider several different factors. First among these is the extent to which it appears that the parties to the dispute have exhausted the reasonable opportunities for settlement during the supervised pre-filing settlement discussions.[37] As discussed below,[38] we believe that one of the primary benefits resulting from the Accelerated Docket will be that arising from formal staff involvement in the pre-filing settlement discussions that are now required for all formal complaints.

18. Second, to the extent that the expedited resolution of a particular dispute appears likely to advance competition in the relevant telecommunications markets, it may be appropriate for inclusion on the Accelerated Docket.[39] As discussed above, one of the primary goals of this new docket is to stimulate real competition among market participants. Relatedly, a marked increase in the number or frequency of a specific type of dispute may indicate that a particular issue is beginning substantially to affect competition. The staff administering the Accelerated Docket would also be acting within its discretion to consider the prevalence of a type of dispute in choosing proceedings for inclusion on the docket.

19. Third, the Bureau staff shall also consider whether the issues presented by a particular proceeding appear to be suited for decision under the constraints imposed by the Accelerated Docket.[40] For example, if the dispute appears to involve more distinct questions than may be litigated effectively under the expedited procedures, staff would be within its discretion to refuse the case. Another factor for consideration in this category likely will be

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35 SBC Comments at 5.

36 *See* Teleport Communications Group, Inc. ("TCG") Comments at 2.

37 *See* Appendix, Rule 1.730(e)(1).

38 *See infra* ¶¶ 25 - 30.

39 *See* Appendix, Rule 1.730(e)(2).

40 *See* Appendix, Rule 1.730(e)(3).

whether the complaining party has chosen to bifurcate its liability claims from its damages claims. As we discuss below, we believe that the time constraints of the Accelerated Docket typically will make it difficult to decide issues of both liability and damages in a single proceeding.[41] Similarly, if it appears that factual discovery will be so extraordinarily complex and time-consuming that it cannot effectively be conducted under the compressed schedule of the Accelerated Docket, the staff administering the docket also would be within its discretion to decline the case.

20. Fourth, in determining whether to admit a dispute to the Accelerated Docket, staff shall consider any suggestions that the complaint fails to state a cognizable claim or raises issues outside of the Commission's established jurisdiction.[42] Because of the expedited nature of proceedings on this docket, we do not anticipate that the Bureau staff will suspend the progress of a complaint proceeding to receive briefing on, and decide, motions to dismiss for lack of jurisdiction or for failure to state a claim on which relief may be granted. It is important, however, that defendants have an effective opportunity to raise these issues. Accordingly, we expect that both jurisdictional infirmities and any alleged failure to state a claim will be raised by potential defendants during the pre-filing phase. If it appears that such objections may have merit, the staff may decline on that basis to accept a proceeding onto the Accelerated Docket. We will not, however, create a separate procedural mechanism for the resolution of these issues.

21. Fifth, the staff administering the Accelerated Docket also has discretion to refuse a complaint proceeding where it appears that one party would be unreasonably limited in its ability effectively to conduct discovery or prepare its case because of an overwhelming resource advantage of the opposing party.[43] We expect such situations will be very rare, and such a determination will fall within the discretion of the staff administering the docket. Moreover, since it will be necessary for a party to the complaint to seek inclusion on the Accelerated Docket, we believe that a measure of self-selection will keep off of the docket many disputes in which such an overwhelming resource disparity might arise. Accordingly, in many cases of substantial disparity of resources, we expect that complainants simply will decline to request inclusion on the docket. In such instances, if the defendant requests inclusion on the Accelerated Docket, the staff likely will need only to examine the parties' relative resources in the context of the issues presented in the complaint.

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41 *See infra* ¶¶ 91 - 93.

42 *See* Appendix, Rule 1.730(e)(4).

43 *See* Appendix, Rule 1.730(e)(5).

22. Beyond the factors listed above, we expect that, in accepting matters onto the Accelerated Docket, the Bureau staff will consider such other issues as it deems appropriate and conducive to the prompt and fair adjudication of the complaint proceedings before it.[44] We decline to adopt SBC's suggestion that parties seeking admission to the Accelerated Docket be required, as a threshold matter, to exhaust alternatives to the complaint process like arbitration, contractual dispute resolution and state commission proceedings.[45] Imposing such a requirement would substantially reduce the ability of a complaining party to obtain the prompt adjudication of its dispute on the Accelerated Docket. In so doing, it would frustrate the goal for this new docket. Furthermore, we believe that the supervised pre-filing settlement talks we discuss below[46] will allow the parties a sufficient opportunity to resolve their differences before the acceptance of a complaint onto the Accelerated Docket.

C. Jurisdictional Considerations

23. The *Public Notice* also requested comment on how, in administering the Accelerated Docket, the Commission could "work cooperatively with state utility commissions on . . . enforcement matters to ensure that the respective interests of the Commission and the states are protected."[47] In response, several commenters raise concerns about our jurisdiction in the wake of last year's ruling by the U.S. Court of Appeals for the Eighth Circuit on review of our Local Competition Order.[48] Specifically, they question whether we retain jurisdiction to adjudicate any disputes that raise issues of interconnection or competition among local exchange carriers.[49]

24. Nothing in this report and order should be interpreted to expand the Commission's jurisdiction to adjudicate disputes under the Act. We also recognize that the Eighth Circuit's decision places limits on the Commission's authority in section 208

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[44] *See* Appendix, Rule 1.730(e)(6).

[45] *See* SBC Comments at 11. Of course, if the parties have contracted to use such a process or if the matter raised is within the jurisdiction of the state to the exclusion of the Commission, the dispute should not be accepted onto the Accelerated Docket.

[46] *See infra* ¶¶ 25 - 30

[47] *Public Notice* at 3, ¶ 1.

[48] *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 118 S. Ct. 879 (1998). *See also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996).

[49] *See, e.g.*, Bell Atlantic Comments at 6; Cincinnati Bell Comments at 2; SBC Comments at 5.

enforcement proceedings. As discussed above, questions of our jurisdiction to adjudicate individual complaint proceedings will be decided on a case-by-case basis as they arise. In any event, under the Eighth Circuit's decision, the Commission is without jurisdiction to adjudicate the reasonableness of rates that have been set by a state commission or to adjudicate a dispute that is governed by the terms of the parties' interconnection agreement.[50] Furthermore, we are hopeful that contact and careful coordination with the relevant state commissions will reduce the potential for state concerns about jurisdictional issues. Accordingly, we direct that the staff administering the Accelerated Docket take all appropriate steps to inform the appropriate state utility commissions where it appears that such action is appropriate.[51]

II. Pre-Filing Requirements

25. The *Public Notice* sought comment on whether it would be useful for parties on the Accelerated Docket to participate in staff supervised settlement discussions before a complaint was filed.[52] The notice asked whether one criterion for acceptance onto the Accelerated Docket should be adequate notice, through these pre-filing discussions, of the issues a complainant would raise in its complaint. It asked whether such supervised pre-filing settlement discussions would implicate the Commission's *ex parte* rules, and it sought suggestions on how to protect confidential or proprietary information that the parties might exchange during these discussions. Additionally, the *Public Notice* sought comment on which parties to a dispute could seek inclusion on the Accelerated Docket.

A. Staff Supervision of Pre-Filing Discussions

26. The commenters differ substantially in their views on the proposal for Bureau involvement in pre-filing settlement discussions. Some commenters support the requirement, arguing that the involvement of Commission staff in the settlement talks likely will increase the productivity of the talks and deter stone-walling or other uncooperative behavior by the

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[50] *See Iowa Utilities Board*, 120 F.3d at 796, 804. *But see id.* at 795 n.12 (recognizing that 1996 Act requires Commission participation in several areas). *See generally Computer & Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983); *North Carolina Utils. Comm'n v. FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977).

[51] *Cf.* WorldCom Comments at 6 (suggesting that state commissions be permitted to intervene in Accelerated Docket proceedings).

[52] *Public Notice* at 5, ¶ 4.

parties.[53] Commenters also assert that requiring supervision of the parties' settlement discussions will serve to educate Commission staff about the dispute so that they will be in a better position to rule quickly and knowledgeably on the issues that arise early in the proceeding.[54] Other commenters argue against supervised settlement discussions, asserting that such a requirement will unnecessarily prolong the pre-filing stage of the actions and that, absent such a requirement, parties would remain free to seek the involvement of Commission staff in their talks if they believe it would be productive.[55] RCN opposes any pre-filing negotiation requirement, asserting that the fast pace of the Accelerated Docket and its substantial early disclosure requirements will serve as sufficient incentive for parties to settle.[56] It questions whether staff involvement in pre-filing discussions would measurably increase the likelihood of settlement.

27. We believe that requiring supervision of the parties' pre-filing discussions will provide substantial benefits in the Accelerated Docket. We believe that one way in which the Accelerated Docket will speed the development of competition is by facilitating the informal resolution of many disputes before complaints are even filed.[57] Involvement of Commission staff in the parties' pre-filing discussions will serve to make those talks run more smoothly and be more productive. We agree with the commenters who predict that the presence of Commission staff in the settlement talks likely will reduce parties' willingness to engage in obstructive or uncooperative behavior during the settlement discussions.[58] Staff involvement in the discussions also may help the parties to focus their dispute in a way that will be most conducive to the short schedule of the Accelerated Docket if a complaint ultimately is filed. Moreover, as some commenters note,[59] a familiarity with the dispute's issues, developed during the pre-filing phase, will assist the staff in efficiently handling proceedings after the complaint is filed.

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53 *See, e.g.*, MCI Comments at 11; USTA Comments at 7; WorldCom Comments at 7.

54 *See, e.g.*, Ameritech Comments at 26-28; MCI Comments at 10-11.

55 *See, e.g.*, ICG Comments at 5-7; TRA Comments at 11. *Cf.* Sprint Comments at 5 (pre-filing requirements should not be allowed unreasonably to delay filing of complaint).

56 RCN Comments at 6.

57 *Cf.* ALTS Comments at 2-3.

58 *See supra* n.53.

59 *See supra* n.54.

28. We are unpersuaded by the argument that staff participation in settlement discussions will unnecessarily prolong that phase of proceedings.[60] Our commitment to the prompt adjudication of disputes affecting competition extends to the pre-filing stage of proceedings. We are confident that requiring staff involvement in the mandatory pre-filing settlement discussions will not slow this phase of proceedings. Furthermore, as noted above, the staff administering the docket will take the progress of these settlement discussions into account when determining whether to accept a complaint onto the Accelerated Docket.[61] If the parties are making substantial progress in these discussions, it is unlikely that the staff supervising the negotiation will place the matter on the Accelerated Docket. On the other hand, if the parties appear to have exhausted the reasonable possibilities for settlement, that factor likely will weigh in favor of promptly admitting the proceeding to the Accelerated Docket.

29. Teligent suggests that, when an entity repeatedly has engaged in the same or similar violations of the Act, we should waive the requirement for supervised pre-filing discussions.[62] We believe that, even if a party's actions have made it a repeated target of complaint proceedings, preliminary settlement discussions are likely to have substantial merit. We therefore decline to dispense entirely with this requirement in such situations. However, we note that, where a potential defendant shows little inclination to comply with its obligations under the Act, the staff likely will not require settlement discussions that are as extensive as typically would be required before accepting a matter onto the Accelerated Docket.[63] Indeed, the existence of multiple complaints about the same practice may itself be a factor militating in favor of accepting a particular dispute onto the Accelerated Docket.

30. Cincinnati Bell asserts that it would be improper for the individual staff member who conducts the pre-filing discussions to handle the matter after a complaint has been filed.[64] Cincinnati Bell does little to expand on this argument, but we take it to argue that supervising the parties' settlement discussions could create a bias or prejudice in the staff

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60 *See supra* n.55.

61 *See supra* ¶ 17.

62 *See* Teligent Comments at 6.

63 We note that the Commission retains other enforcement authority that is independent of the formal complaint process and may be exercised when a party has repeatedly or willfully violated the Act, or Commission rules or orders. *See, e.g.*, 47 U.S.C. § 312 (cease and desist power; revocation of radio licenses); *id.* § 503 (forfeiture authority).

64 *See* Cincinnati Bell Comments at 6.

member so that he or she could not impartially adjudicate the matter. We reject this contention. Federal courts repeatedly have held that a judge's participation in settlement discussions, by itself, provides no basis for recusing the judge from deciding the case;[65] it does not create the kind of personal or extra-judicial knowledge that requires disqualification.[66] Only when a judge conducts himself in a manner that may raise questions about his impartiality is there proper ground for recusal.[67] We see no reason to adopt a stricter rule than that of the federal courts on this issue. We are confident that, just as they do in participating in status conferences after a complaint has been filed, Commission staff will be able to participate in pre-filing settlement discussions without forming prejudices that will impede their ability to handle impartially the matters assigned to them.

B. Procedure for Acceptance to the Accelerated Docket

31. The *Public Notice* sought comment on which parties could seek inclusion of complaints on the Accelerated Docket.[68] Some commenters suggest that matters should be accepted onto the Accelerated Docket only with the consent of both sides.[69] Other comments assert that inclusion on the docket should be available upon the request of either the complainant or the defendant, but that agreement of both sides should not be required.[70] In particular, some commenters argue that, once a complaint has been filed against it, a defendant should have the option, during a limited window of time, to seek inclusion on the

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[65] *See, e.g., Bilello v. Abbott Labs.*, 825 F.2d 475, 477-81 (E.D.N.Y. 1993) (collecting cases); *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980). *See also Anderson v. Sheppard*, 856 F.2d 741, 750 (6th Cir. 1988); *Franks v. Nimmo*, 796 F.2d 1230 (10th Cir. 1986); *Smith v. Sentry Ins.*, 752 F. Supp. 1058 (N.D. Ga. 1990).

[66] *See Bilello*, 825 F. Supp. at 479 (citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966); *Apple v. Jewish Hosp.*, 829 F.2d 326, 333 (2d Cir. 1987)).

[67] *See United States v. Barry*, 938 F.2d 1327, 1340 (D.C. Cir. 1991); *DeLuca v. Long Island Lighting Co.*, 862 F.2d 427 (2d Cir. 1988); *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 460 (7th Cir. 1985); *Bilello*, 825 F. Supp. at 479.

[68] *See Public Notice* at 5, ¶ 4.

[69] *See, e.g.*, Bell Atlantic Comments at 6; BellSouth Comments at 9.

[70] *See, e.g.*, Cincinnati Bell Comments at 6; ICG Comments at 7; MCI Comments at 7; Sprint Comments at 5-6; TRA Comments at 12.

Accelerated Docket.[71] Certain commenters contend that the Commission staff should not have the authority to place a complaint on its docket unless at least one party requests inclusion.[72]

32. We conclude that the Accelerated Docket will be most effective if either party to a dispute may request inclusion on it. Requiring mutual agreement of the parties, as suggested by some commenters, would give either party veto power over the process and substantially reduce the docket's effectiveness at stimulating a competitive environment. However, we believe that the ends of the Accelerated Docket would not be well served if the staff had the discretion to place a proceeding on the docket absent a request from at least one party.

33. A prospective complainant who wishes to have its dispute handled on the Accelerated Docket shall contact the Bureau either by phone or in writing to seek assistance in reaching a negotiated resolution to the matter.[73] If it appears from the preliminary information supplied by the prospective complainant that the dispute may be appropriate for handling under the procedures that we set out today, the staff will schedule the appropriate pre-filing settlement talks. Based on the progress of these negotiations, the nature of the dispute as revealed during the discussions, and other considerations, including those outlined above,[74] Commission staff will determine whether the matter is appropriate for Accelerated Docket treatment. At any time during the pre-filing discussions, a prospective complainant may request that the staff then accept the matter onto the docket. Upon receiving such a request, the staff promptly will inform the complainant whether the opportunities for settlement have been adequately exhausted and whether the matter otherwise appears appropriate for the docket. Naturally, a complainant may file its complaint at any time it wishes; however, complaints filed before a staff decision to admit a particular proceeding onto the Accelerated Docket will be handled under the procedures generally applicable to

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71 *See, e.g.*, MCI Comments at 8; TRA Comments at 12.

72 *See, e.g.*, TCG Comments at 2.

73 *See* Appendix, Rule 1.730(b).

74 *See supra* ¶¶ 17 - 22. Above, we require staff to consider, *inter alia*, the following factors in deciding whether to admit a specific dispute to the Accelerated Docket: (1) whether it appears that the parties have exhausted the reasonable opportunities in the pre-filing discussions; (2) whether expedited resolution of the dispute appears likely to advance competition in the relevant telecommunications marketplace; (3) whether the dispute is suited for decision under the constraints imposed by the new docket; (4) whether the complainant states a cognizable claim within the Commission's established jurisdiction; and (5) whether it appears, in light of a substantial resource disparity between the parties that one party would be unreasonably limited in its ability effectively to conduct discovery or prepare its case. *Id.*

formal complaint proceedings. Once the staff determines that a dispute is appropriate for the Accelerated Docket and if the parties remain unable to resolve their differences during the supervised settlement discussions, the complainant shall submit with its complaint a letter indicating that it has gained acceptance onto the docket.[75] So that the staff immediately may begin work on the matter, a complainant shall, at the time it files its complaint, serve a copy on the staff who supervised the settlement talks.[76] Such a complaint, once it is filed and accepted onto the Accelerated Docket, will be handled by the Bureau under the rules set out herein.

34. As some commenters recommend, we believe that it is also important that defendants be able to request that their proceeding be included on the Accelerated Docket.[77] We therefore adopt a rule under which a defendant may seek inclusion on the Accelerated Docket by contacting the Bureau no more than five days after receiving service of a complaint.[78] In order to comply with our *ex parte* rules,[79] such contact shall be by a facsimile or hand-delivered letter of which a copy also is transmitted in the same manner to the complainant. A defendant seeking admission to the Accelerated Docket will be required to file its answer within 10 days of receiving service of the complaint, as required by this *Second Report and Order*.[80] Within two business days of a defendant's request letter, the determination will be made whether to grant the request and accept the proceeding onto the Accelerated Docket. If it appears that the parties have not conducted sufficient pre-filing settlement discussions, the staff may schedule supervised settlement talks, as discussed above. If appropriate, the progress of the matter after the filing of the answer may be postponed during these discussions. Once a proceeding has been accepted onto the Accelerated Docket at the defendant's request, the staff will also set a schedule for both sides' production of documents[81] and the remainder of the proceeding.[82] After the staff has scheduled the

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75 *See* Appendix, Rule 1.730(b).

76 *See id.*

77 *See, e.g.*, Cincinnati Bell Comments at 6; MCI Comments at 7.

78 *See* Appendix, Rule 1.730(c).

79 *See* 47 C.F.R. § 1.1200, *et seq.*

80 *See infra* ¶ 42; Appendix, Rule 1.730(c).

81 *See infra*, ¶¶ 48 - 58.

82 *See* Appendix, Rule 1.730(c).

production of documents, matters accepted onto the docket at a defendant's request will proceed according to the schedule otherwise applicable to Accelerated Docket proceedings.

35. Commenters suggest that we establish a mechanism by which either party to a complaint proceeding that is pending on the effective date of these rules may request inclusion on the Accelerated Docket. It appears that certain complaints already pending in the Bureau's Enforcement Division may benefit from, and be appropriate for, the expedited procedures of the new docket. Accordingly, during the thirty days following the effective date of these rules, either party to a complaint proceeding then pending before the Bureau's Enforcement Division and in which an answer previously has been served, or is past due, may contact the staff administering the Accelerated Docket to request inclusion of the matter on the docket.[83] A party making such a request shall do so by facsimile or hand-delivered letter of which a copy is sent contemporaneously to the opposing party or parties by the same mode of transmission.

C. *Ex Parte* and Confidentiality Issues

36. As noted above, the *Public Notice* also inquired whether the pre-filing settlement discussions would implicate the Commission's *ex parte* rules,[84] and how parties could ensure protection for any confidential or proprietary information exchanged during the pre-filing phase. Only one commenter asserted that staff-supervised settlement discussions would implicate our *ex parte* rules, but it offered no serious explanation of why that was true.[85] After reviewing the matter, we believe that staff involvement in the pre-filing discussions poses no potential for a prohibited *ex parte* contact.[86] Our *ex parte* rules restrict the actions of parties to complaint proceedings only after a complaint has been filed.[87] Typically, contacts between a single party and Commission staff under these rules will occur before the filing of a complaint and therefore will not implicate our rules. We believe that the main potential for *ex parte* contact that these rules create is the situation in which a defendant requests the inclusion of its proceeding on the Accelerated Docket. As we note

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[83] *See* Appendix, Rule 1.730(d). We believe that, where a defendant has failed timely to file its answer, it likely will have difficulty establishing that its case is appropriate for inclusion on the Accelerated Docket.

[84] *See* 47 C.F.R. § 1.1200, *et seq.*

[85] *See* ICG Comments at 6.

[86] *Cf.* AT&T Comments at 2-3; MCI Comments at 11.

[87] *See* 47 C.F.R. § 1.1202(a), (d).

above,[88] however, such requests must be made by letter, a copy of which shall be provided to the complainant at the same time and by the same mode of transmission as used for the Commission staff. This will pose no danger of an improper *ex parte* contact. We therefore reject the contention that the supervised pre-filing discussions and other contact with Commission staff under these rules will offend our *ex parte* rules.[89]

37. In the event that parties engaged in the required supervised settlement discussions should have occasion to exchange confidential or proprietary documents, they may negotiate a confidentiality agreement that is acceptable to both sides. If the parties are unable to reach agreement on a confidentiality agreement, they shall be governed by Rule 1.731.[90]

III. Pleading Requirements

38. The *Public Notice* noted the new pleading requirements under the *First Report & Order*, and stated that these requirements likely would also apply to Accelerated Docket proceedings.[91] It requested comment on the reasonableness of requiring that the defendant's answer be filed within seven calendar days of the complaint in order to accommodate the expedited nature of the new docket. Many commenters support the proposed schedule for filing an answer on the Accelerated Docket.[92] Several commenters, however, vigorously oppose a seven-day answer deadline, arguing that it would afford defendants too little time to accomplish the tasks necessary to draft a sufficiently detailed answer and to assemble the necessary discovery materials for production to the complainant at the time of the answer.[93] In opposing the seven-day answer period, SBC asserts that the 20-day period imposed in the *First Report & Order* is the bare minimum that complies with the requirements of constitutional due process.[94]

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[88] *See supra* ¶ 34.

[89] We also have concluded above that staff supervision of the pre-filing process will not create the danger of Commission staff forming prejudices that will impede their ability to handle impartially the matters assigned to them. *See supra* ¶ 30.

[90] 47 C.F.R § 1.731.

[91] *Public Notice* at 5, ¶ 5.

[92] *See, e.g.*, MCI Comments at 11; Sprint Comments at 6; WorldCom Comments at 8. *See also* RCN Comments at 7 (suggesting 10-day answer period as reasonable); USTA Comments at 8 (same).

[93] *See, e.g.*, Ameritech Comments at 31; Cincinnati Bell Comments at 7; SBC Comments at 13.

[94] *See* SBC Comments at 14.

A. Content Requirements for Pleadings

39. After review and careful consideration of the comments on this topic, we have concluded that it is appropriate to modify slightly the content requirements for initial pleadings on the Accelerated Docket. As discussed in the *First Report & Order*, we believe that a full presentation, by both parties, of the relevant facts will "improve the utility and content of pleadings" and help to "speed resolution of" complaints.[95] We also believe, however, that the key to the success of the Accelerated Docket will be its ability to move the parties to narrow, focused issues as quickly as possible so that evidence on those issues may be presented at the minitrial. Given the opportunity for parties to present evidence at the minitrials, we are less concerned with the formal presentation of evidence through affidavits accompanying the pleadings than we are with having the parties promptly reach issue. Thus, as set out in Rule 1.721(a)(5), promulgated with the *First Report & Order*, the complaint:

> shall include a detailed explanation of the manner and time period in which a defendant has allegedly violated the Act, Commission order, or Commission rule in question, including a full identification or description of the communications, transmissions, services, or other carrier conduct complained of and the nature of any injury allegedly sustained by the complainant.[96]

Similarly, the answer "shall advise the complainant and the Commission fully and completely of the nature of any defense, and shall respond specifically to all material allegations of the complaint."[97] As discussed at greater length below, initial pleadings on the Accelerated Docket also shall include that portion of the information designation discussed in the *First Report & Order* which lists individuals believed to have firsthand knowledge of the facts alleged with particularity in the pleadings.[98]

40. Given the relatively rapid pace of the Accelerated Docket, we have decided to dispense with certain pleading requirements set out in the *First Report & Order*. First, we will not require that parties to Accelerated Docket proceedings provide extensive legal

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95 *First Report & Order*, 12 FCC Rcd. at 22543, ¶ 81.

96 47 C.F.R. § 1.721(a)(5).

97 *Id.* § 1.724(b).

98 *See infra*, ¶ 59; 47 C.F.R. §§ 1.721(a)(10)(i), 1.724(f)(1).

analysis, proposed findings of fact and conclusions of law with their initial pleadings.[99] Thus, we will not require that the pleadings on the Accelerated Docket comply with Rules 1.721(a)(6) or 1.724(c).[100] We believe that parties will have an adequate opportunity to present this information somewhat later in proceedings on the Accelerated Docket. As discussed below,[101] parties will be required to submit proposed findings of fact and conclusions of law shortly before the minitrial that typically will take place in proceedings on this docket. Similarly, during this minitrial, parties will have the opportunity to present legal argument regarding their claims and defenses, and we therefore believe that this material may be omitted from the initial pleadings without substantially slowing down the process. We emphasize, however, that our decision not to require extensive legal analysis should not be interpreted as sanctioning notice-pleading or a similar omission of the full factual and legal basis for a party's pleadings. Rather, we expect that the complaint and answer will fully set out the facts and legal theories on which the parties premise their claims and defenses.[102] This level of detail will be crucial to the expedited pace of discovery and adjudication that we envision for the Accelerated Docket. Moreover, either party's failure in this regard may result in the summary disposition of some or all of their claims or defenses.

41. Additionally, we have decided to dispense with the requirement that parties to Accelerated Docket proceedings support their initial pleadings with affidavits, as required in Rules 1.721(a)(5), (a)(11) and 1.724(g).[103] We believe that the opportunity to present live testimony at the minitrial, discussed below,[104] and the more extensive discovery available on the Accelerated Docket will render unnecessary the requirement that parties support their pleadings with affidavits. We have also decided to dispense, in Accelerated Docket proceedings, with the requirement that parties include in their information designations a

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[99] *See* Appendix, Rules 1.721(e)(1)(ii), 1.724(k)(3).

[100] 47 C.F.R § 1.721(a)(6), 1.724(c) (requiring proposed findings of fact, conclusions of law and legal analysis in complaint and answer).

[101] *See infra* ¶ 90.

[102] *See* Appendix, Rules 1.721(e)(1)(ii), 1.724(k)(3).

[103] 47 C.F.R. §§ 1.721(a)(5), (a)(11), 1.724(g). *See* Appendix, Rules 1.721(e)(1)(i), 1.724(k)(2). As reflected in the new rules that we adopt, allegations that formerly would have been subject to the affidavit requirement remain subject to the provisions of Rule 1.52, 47 C.F.R. § 1.52. *See* Appendix, Rules 1.721(e)(1)(i), 1.724(k)(2).

[104] *See infra* at ¶ 78 - 90.

description of all relevant documents in their possession.[105] As we discuss below, parties will be required automatically to produce with their initial pleadings those documents that bear the appropriate relevance relationship with the issues in the proceeding.[106]

B. Timing of the Answer

42. After consideration of the comments regarding the timing of the answer, we have concluded that an appropriate answer period for the Accelerated Docket is ten days. Thus, a defendant's answer, as well as the discovery documents subject to automatic production discussed below,[107] will be due ten calendar days after the defendant receives service of a complaint on the Accelerated Docket.[108] As noted in the *First Report & Order*, defendants will have substantial advance notice of the facts and legal theories underlying a complaint from the pre-filing settlement discussions that are now required in all complaint proceedings.[109] We believe that the Commission staff's involvement in the parties' pre-filing settlement discussions should create an environment in which defendants on the Accelerated Docket will gain even more detail about a complainant's claim before a complaint is actually filed. It therefore appears that, during the progress of these settlement talks, defendants will have a substantial opportunity to accomplish the research and factual investigation that will be necessary to file an answer that, as we require above, "shall advise the complainant and the

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[105] 47 C.F.R. §§ 1.721(a)(10)(ii), 1.724(f)(2), 1.726(d)(2). *See* Appendix, Rules 1.721(e)(1)(iv), 1.724(k)(5). Additionally, we dispense with the requirement, under Rules 1.721(a)(10)(iii) and 1.724(f)(3), 47 C.F.R. §§ 1.721(a)(10)(iii), 1.724(f)(3), that a party's information designation describe the manner in which the party identified persons or documents for inclusion in the information designation. *See* Appendix, Rules 1.721(e)(1)(v), 1.724(k)(6).

[106] *See infra*, ¶¶ 48 - 58. Under the rules we adopt today, we recognize it is possible that a complaint could meet the pleading requirements of the Accelerated Docket, but fall short of the requirements set out in the *First Report & Order* for complaint proceedings more generally. Consequently, in the unlikely event that the Commission staff should determine, after a complaint was accepted onto the docket, that it was not appropriate for handling on the Accelerated Docket, a complainant might be required to amend its complaint and the accompanying documents in order to meet the requirements of the *First Report & Order*.

[107] *See id.*

[108] *See* Appendix, Rule 1.724(k)(1). *Cf.* Cincinnati Bell Comments at 7 (suggesting that answer period begin to run only when defendant is actually served with complaint).

[109] Conversely, any defendant who seeks inclusion of a pending proceeding on the Accelerated Docket does so knowing the pleading and discovery requirements and will be presumed to agree to those requirements in requesting referral.